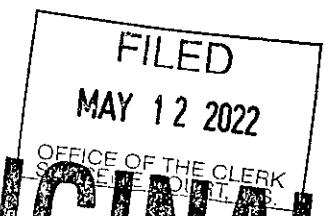


No. 21-7927



**ORIGINAL**

IN THE

SUPREME COURT OF THE UNITED STATES

Lamar Reese — PETITIONER  
(Your Name)

vs.

Richard Bowen, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for The Sixth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Lamar Reese  
(Your Name)

878 Coitsville-Hubbard Rd.  
(Address)

Youngstown, Ohio 44505  
(City, State, Zip Code)

None  
(Phone Number)

### QUESTION(S) PRESENTED

I stipulated into a polygraph Test. But the polygraph results showed Obvious error and did not Comply with Ohio evidence Rule 702(c). But there was no objection to it at trial. I missed it and my Attorney missed it. Also I have evidence that I have ADHD diagnoses since I was a kid. If someone miss a error does that make a error rightous? If someone dont get caught stealing does that make it rightous?

Also I presented the error on Direct Appeal as plain error and sent a copy to the trial court. I fought it all the way to the Federal Court. My right to a Fair Trial is a Constitutional right?

This polygraph Test showed obvious error. The polygraph examiners asked me am I a citizen of Canada and I said yes, But the answer was found non deceptive. But it is obvious I am a citizen of U.S.A. Is this a obvious error? The Jury was Mislead. Is this not a Fair Trial?

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

State of Ohio v. Sovet  
Daubert v. Merrill  
State of Ohio v. Davis  
State of Wyoming v. Cullin  
Hansen v. Burton  
Walker v. Engle  
Maglaya v. Wainwright  
McMeans v. Brigano, 228 F. 3d 674, 681 (6th Cir. 2000)  
Franklin v. Rose, 811 F. 2d 323, 322, 326 (6th Cir. 1987)  
Mawpin v. Smith, 785 F. 2d 135, 138 (6th Cir. 1986)  
Shafer v. Wilson, No. 07-3284, 364 Fed. Appx 940, 2010 U.S. App. Lexis 2452, 2010 WL 395914 at \*5 (6th Cir. Feb. 4, 2010)  
Coleman v. Thompson, 501 U.S. 722, 750 (1991)  
Schmerber v. California (1966), 384 U.S. 757, 764  
Brecht v. Abrahamson, 507 U.S. 619, 637, 113 S. Ct. 1710, 123 L. Ed. 2d 353 (1993)  
O'Neal v. McAninch 513 U.S. 432, 436, 115 S. Ct. 992, 130 L. Ed. 2d 947 (1995)  
Cooper v. Sawders 837 F. 2d 284, 287 (6th Cir. 1988)  
State of Wyoming v. Cullin (Wyo. 1977), 565 P. 2d 445  
United States v. Ridling (E.D. Mich 1972) 350 F. Supp. 90.

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### OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Feb 22, 2022.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

5<sup>th</sup> and 14<sup>th</sup> Amendments of U.S. Constitution

6<sup>th</sup> Amendment of U.S. Constitution

Due Process

Fundamental Fairness

Right to Fair Trial

Ohio Evidence Rule 702(c)

## Statements of the Case and Facts

This case turns on the Testimony of a claimed witness who suffered impeachment and a polygraph examination which would not stand up to Rule 702(c) of the Ohio Rules of evidence.

This cause began as an indictment for aggravated Murder, with a gun specification and aggravated Robbery. It began with an indictment (Tr. at 14). The matter proceeded through various Pretrials and Hearings and eventually culminated in a Jury trial beginning on April 14, 2014 (Tr. at 1.).

The matter proceeded troubled through inconsistent testimony, the parties made their arguments and the matter resulted in a guilty verdict on April 21, 2014 (Tr. at 710). The Jury found me Lamar Reese guilty of all charges. The Court sentenced me to 33 years to life (Sent. Tr. at 12.).

Supporting the Conviction and Sentence, the Government relied largely on the Testimony of a claimed eye witness who suffered remarkable impeachment and the polygraph examiner Michael Lopresti, from the Bureau of Criminal Investigations (Tr. at 320, et seq.; 258 et seq.). The witness Aaron Triplett's Testimony was, essentially, was that me and my Co-Defendant Frankie Hudson Jr was both the shooters in the matter (Tr. at 351, et seq.). Never the less, Aaron Triplett's Testimony was subject to impeachment on multiple levels.

## Statements of the Case and Facts Continued

According to Ta Triplett's own Testimony, he received Consideration in the form of immunity from any Prosecution involving the homicide or drug transaction that were at issue. (Tr. at 359-380.). More over Triplett made two incosistant statements, one four days after the September, 2011 date of the Homicide in speaking to police, Denying any involvement and than one other Conflicting almost 2 years later. The second statement came after Triplett himself, was implicated as the murderer (Tr. at 351.).

The polygraph examiner Michael Lopresti, of the Bureau of Criminal investigations (BCI) (Tr. at 258, et seq.)

Lopresti was, a polygrapher for BCI. He did a stipulated polygraph examination of me, that being an examination whereby the Prosecution and Defense enter into a 11 point Contract as to the admissability of the examination -

Polygraph examinations being wholly inadmissible without such an agreement (Tr. at 272.).

This polygraph, however, was far from perfect, and the prosecution never laid out a clear standard for what would make the examination reliable versus unreliable, prior to tendering it into evidence (Id, Generally.) Not withstanding the foregoing, the Conviction and Sentence came to be. (supra.)

## Statements of the Case and Facts Continued

Also without the errors in this Polygraph, I would have been found not guilty just like my Co-defendant Frankie Hudson Jr got found not guilty on all charges in June, 2015. (Co-defendant Frankie Hudson Jr's Trial Tr. Case No. 2013CR828)

When I had Counsel Rhys Cartwright-Jones he appealed the 7th District Court of Appeals of Ohio's affirmation and he appealed to this court. He Filed Appeal and Memorandum in Support in this Court March 25, 2016.

October 5, 2017 I Filed a Federal Habeas Corpus in the United States District Court Northern District of Ohio. It was denied [REDACTED] May 26, 2021.

I Filed a request for Certificate of Appealability in the United States Court of Appeals for the Sixth Circuit. It was denied February 22, 2022.

## REASONS FOR GRANTING THE PETITION

The Alleged Errors of Evidence rule impacted my trial and the Jury's verdict. I presented the Constitutional error in the state courts.

In order to satisfy the fair presentation requirement a habeas petitioner must present both the factual and legal underpinnings of his claims to the state Courts. McMeans V. Brigano, 228 F.3d 674, 681 (6th Cir. 2000) I Fairly presented my claim in the state Courts and I did Exhaust remedies prior to raising claims in the federal habeas Corpus proceedings and I presented my claim to the state Courts under the same theory in which later presented in Federal Court.

A petitioner must present his claims to the state Courts as a federal Constitutional issue: In determining whether a petitioner presented his claim in such a way as to alert the state Courts to its federal nature, a federal habeas court should consider whether the petitioner: (1) relied on federal cases employing Constitutional analysis; (2) relied on state cases employing Constitutional analysis; (3) phrased the claim in terms of Constitutional law or in terms sufficiently particular to allege a denial of a specific Constitutional right; or (4) alleged facts well within the main stream of Constitutional law. Franklin V. Rose, 811 F.2d 323, 322, 326 (6th Cir. 1987) I met all four.

My claim was fairly presented as a federal claim and I fairly presented my claim in a federal Constitutional Context to the highest state Court. Also my claim was exhausted in state Courts and fairly presented to the state Court and fairly presented as a federal Constitutional claim to the state Courts.

"If" the state argues a petitioner has procedurally defaulted his claims, the court must conduct a four-step analysis to determine whether the petitioner has indeed defaulted and if so, whether the procedural default may be excused Maupin V. Smith, 785 F.2d 135, 138 (6th Cir. 1986) This does not apply to my case- In my case the state "never" argued that I had procedurally defaulted my claims.

Also the state Court never enforced the contemporaneous-objection rule, under the "an appellate Court will not consider any error which counsel for a party complaining of the trial Court's judgement could have called but did not call to the trial Court's attention at a time when such error could have been avoided or corrected by the trial court." Shafer V. Wilson, No. 07-3284, 364 Fed. Appx 940, 2010 U.S. App. Lexis 2452, 2010 WL 395914 at \*5 (6th Cir. Feb. 4, 2010). In my case the state court considered the error and reviewed it on its Merits. The state court never stated they were not reviewing it on its Merits. The way the state court came up with an opinion and cited case law shows that they reviewed and considered it on the Merits of the error. Also under the second part of the Maupin Test the state court never enforced their procedural sanction because they considered and reviewed the plain error on its Merits.

The alleged error has infected my entire trial with error of Constitutional dimensions because since I did not have the right to confront the adverse witness about how the polygraph results was inaccurate and unreliable. This caused the Jury to believe I was deceptive when I really was telling the truth. This resulted in me not having a fair trial!

I may also overcome a procedural default by demonstrating that not excusing the default "will result in a fundamental miscarriage of justice." Coleman V. Thompson, 501 U.S. 722, 750 (1991). I supplemented a Constitutional claim with a colorable showing of factual innocence and I am an innocent man suffering an unconstitutional loss of liberty. With the confrontation of the unreliability and inaccuracy of the polygraph results the jury would have found me not guilty. Also my allegations of Constitutional error is supported with new reliable evidence that was not presented at my trial. The polygraph test results were also not supposed to be admitted due to the fact that the polygraph Examiner failed to evaluate me for mental issues. I have a mental illness since I was a youth. This also may be the reason the polygraph test showed obvious error. Also I am being prevented from my right to appeal my post conviction petition because the trial judge is refusing to give findings of facts and conclusions of law pursuant to O.R.C. 2953.21.

Ohio state law including rules of Evidence can result in the granting of a writ of habeas Corpus only if they result in a denial of fundamental fairness therefor violated due process and the admission of polygraph testimony does fall in this category because the polygraph test results were not properly admitted under state law and was obviously not reliable and not accurate.

My Attorney did not get to confront the adverse witness on that because the trial court failed to comply with rule 702(c) of Ohio rules of evidence. This had an impact on my trial and caused me to not have a fair trial. This also impacted my innocence because with the confrontation of the unreliability and inaccuracy of the polygraph results I would have been found not guilty like my co-defendant Frankie Hudson Jr.

## REASONS FOR GRANTING THE PETITION

Evidentiary rulings do form the basis for a Constitutional claim because the right to Confrontation of Adverse witness in which polygraph examiners is under the 6th Amendment. Also improperly Conducted and Admitted Evidence can impact the jury's verdict and the right to a fair trial which amounts to Due process violation under the 5th and 14th Amendments and Fundamental Fairness amounts to Due process too. These Amendments are under the U.S. Constitution.

I argued my right to confrontation of adverse witness in the state Courts. My Attorney did not get to cross examine the polygraph examiner about how the test had an obvious defect in reliability and was Conducted in a way that yielded in an inaccurate result because the trial court failed to Comply with Ohio Rules of Evidence rule 702(c). The polygraph examiner asked me am I a Citizen of Canada. I said yes which was obviously not true and this yes answer was found non deceptive. This Constitutional right has been argued in every angle in the State Courts. It was reminded again in the Habeas Corpus procedure.

The Ohio Supreme Court set out Conditions for allowing polygraph test results in State of Ohio v. Sovel. But also in State of Ohio v. Sovel the Ohio Supreme Court also noted with approval the sentiments expressed by the Supreme Court of Wyoming in Cullin v. State (Wyo. 1997), 565 P.2d 445. "We see no reason why the polygraph expert should be treated in any more restrictive manner than other experts. That the polygraph deals with mind and body reactions should not subject it to exclusion from consideration any more than other testimony of a scientific nature. We have long utilized the expertise of psychiatrists and psychologists to furnish advice and assistance to the Jury to explore the mysteries of the mind with respect to mental illnesses as a defense. Medical doctors are regularly called to testify as to the intricate workings of the body in sensitive questions of a complex physical condition or cause of death. It is the normal obligation of the trial Judge to protect the Jurors from exposure to evidence which might mislead them, regardless of whatever kind of scientific evidence is under scrutiny. The device of cross-examination soon smokes out the inept, the unlearned, the inadequate self-styled expert."

This means the polygraph Expert's testimony has to Comply with Evidence rule 702(c) of Ohio rules of Evidence under it's scientific Nature.

Also in Sovel the Ohio Supreme Court expressed a defendant who wishes to take a polygraph examination and admit the results will be permitted to do so, subject only to broad discretion in the trial Judge to disallow the evidence in a particular case if the test was improperly Conducted. United States v. Ridling (E.D. Mich 1972) 350 F. Supp. 90. The trial Judge in my case abused her discretion by allowing in Evidence polygraph results that was Conducted in a way that yielded in an inaccurate result!

The Federal Court may review the decision to admit polygraph testimony because of the denial of fundamental fairness.

My trial Attorney did not have the chance to cross examine the polygraph examiner on how the test had obvious defect in reliability and was Conducted in a way that yielded in an inaccurate result because the trial court failed to Comply with Ohio rules of Evidence 702(c)

The admission violated the State's rule of evidence concerning expert testimony and caused me to suffer a denial of fundamental fairness during my trial.

There is clearly established Constitutional right implicated by admission of polygraph evidence in accordance with the relevant rules of evidence.

There is supreme Court precedent to support my claim. In the state v. Sovel case it states polygraph evidence is "essentially testimonial." See Schmerber v. California (1966), 384 U.S. 757, 764. This means the Jury had to rely on the polygraph Expert Witness's Testimony. But I did not get to confront the Adverse witness on how the polygraph test had an obvious defect in reliability and was Conducted in a way that yielded in an inaccurate result, because the trial court did not Comply with Evidence rule 702(c) of Ohio rules of Evidence. Other Supreme Court precedent that can support another angle of my claim is stated in Hansen v. Burton Case. Habeas petitioners are not entitled to relief unless an error "had substantial and injurious effect or influence in determining the Jury's verdict." Brecht v. Abrahamson, 507 U.S. 619, 637, 113 S. Ct. 1710, 123 L. Ed. 2d 353 (1993) And petitioner will prevail where "a Federal judge in a habeas proceeding is in grave doubt about whether a trial error of law of federal law" Substantially affected a Jury's verdict. O'Neal v. McAninch 513 U.S. 432, 436, 115 S. Ct. 992, 130 L. Ed. 2d 947 (1995). The error of me not getting a fair trial substantially affected my Jury's verdict.

There is also 6th Circuit precedent to support another angle of my claim. "However we will Grant Federal Habeas corpus only where a violation of a state's evidentiary rule results in the denial of fundamental fairness and therefore a denial of due process". Cooper v. Sowders 837 F.2d 284, 287 (6th Circuit 1988)

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Lamar Reese

Date: April 26, 2022